

PETER M. HART (SB# 198691)
hartpeter@msn.com
LAW OFFICES OF PETER M. HART
13952 Bora Bora Way, F-320
Marina Del Rey, CA 90292
Telephone: (310) 478-5789
Facsimile: (509) 561-6441

Attorney for Plaintiffs
JAIME CASTRO and REYES ALVAREZ

(Counsel for Plaintiffs continued on page 2)

JENNIFER S. BALDOCCHI (SB# 168945)
jenniferbaldocchi@paulhastings.com
ELIZABETH A. FALCONE (SB# 219084)
elizabethfalcone@paulhastings.com
JENNIFER A. AWREY (SB# 244332)
jenniferawrey@paulhastings.com
PAUL, HASTINGS, JANOFKY & WALKER LLP
515 South Flower Street
Twenty-Fifth Floor
Los Angeles, CA 90071
Telephone: (213) 683-6000
Facsimile: (213) 627-0705

Attorneys for Defendants
UNITED PARCEL SERVICE, INC., UPS GROUND
FREIGHT, INC., and OVERNITE CORPORATION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

JAIME CASTRO and REYES
ALVAREZ as individuals and on
behalf of all other similarly situated,

Plaintiffs,

vs.

UPS GROUND FREIGHT, INC., a
corporation; UNITED PARCEL
SERVICE, INC., a corporation;
OVERNITE CORP., a corporation;
and DOES 1 through 20, inclusive,

Defendants.

Case No. CV 08-4898 ODW (CWx)

**JOINT STIPULATION TO
CONDITIONALLY AMEND
COMPLAINT FOR SETTLEMENT
PURPOSES**

1 LARRY W. LEE (SB# 228175)
lwlee@diversitylaw.com
2 DANIEL H. CHANG (SB# 183803)
dchang@diversitylaw.com
3 CRAIG S. HUBBLE (SB# 200789)
chubble@diversitylaw.com
4 DIVERSITY LAW GROUP, A Professional Corporation
444 S. Flower Street,
5 Citigroup Center, Suite 1370
Los Angeles, CA 90071
6 Telephone: (213) 488-6555
Facsimile: (213) 488-6554
7

8 KENNETH H. YOON (SB# 198443)
LAW OFFICES OF KENNETH H. YOON
One Wilshire Blvd., Suite 2200
9 Los Angeles, CA 90017
Telephone: (213) 612-0988
10 Facsimile: (213) 947-1211

11 ERIC HONIG, ESQ. (SB# 140765)
LAW OFFICE OF ERIC HONIG
12 P.O. Box 10327
Marina Del Rey, CA 90295
13

Attorneys for Plaintiffs
14 JAIME CASTRO and REYES ALVAREZ
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STIPULATION

WHEREAS, the Parties in the above captioned case engaged in a day-long mediation on December 15, 2008, before David Rotman of Gregorio, Haldeman, Piazza, Rotman, and Frank;

WHEREAS, mediation of this matter involved the gathering and analysis of an extraordinary volume of data regarding approximately 3,400 employees employed during the putative class period from June 2004 through the date of the mediation;

WHEREAS, in the course of analyzing the data, the Parties realized the benefit of including in the mediation two additional sub-classes covering additional job classifications;

WHEREAS, the Parties reached a settlement which they will present to this Court in the near future for preliminary approval;

WHEREAS, the Parties mutually agree that adding the proposed additional sub-classes is appropriate in light of the agreement reached at mediation with respect to certain terms for settlement;

WHEREAS, the settlement reached at mediation contemplates the addition of two new sub-classes;

NOW THEREFORE, the Parties have agreed to stipulate, subject to the Court's approval, as follows:

1 1. The Plaintiffs be permitted to amend their complaint to add two
2 additional sub-classes described as follows (collectively, the “Non-City Driver
3 Classes”):

4
5 a. A “Non-City Driver Auto-Deduction Class” comprised of
6 all past and present non-union, non-exempt (hourly) employees of Defendants who
7 were employed at any time from June 24, 2004, through the date of class closure as
8 determined by the Court, in California, specifically excluding any employees whose
9 claims were released as part of the settlement of the lawsuit entitled Javier Munoz,
10 et al. v. UPS Ground Freight, Inc. (N.D. Cal. Case No. C07-00970 MJJ) and
11 specifically excluding any City Driver Class Members.

12
13 b. A “Non-City Driver Terminated Employees Class”
14 comprised of all past and present non-union, non-exempt (hourly) employees of
15 Defendants, who were employed at any time from June 24, 2004, through the date
16 of class closure as determined by the Court, in California, whose employment with
17 Defendants ended prior to the date of preliminary court approval of the Settlement,
18 specifically excluding any employees whose claims were released as part of the
19 settlement of the lawsuit entitled Javier Munoz, et al. v. UPS Ground Freight, Inc.
20 (N.D. Cal. Case No. C07-00970 MJJ) and specifically excluding any City Driver
21 Class Members.

22
23 2. That the First Amended Complaint, attached hereto as Exhibit
24 A, be filed for the sole purpose of seeking approval of the settlement which the
25 Parties have reached.

26
27 3. Upon the entry and filing of this stipulation, the First Amended
28 Complaint shall be deemed filed and served. Defendants’ previously filed Answer

1 to Plaintiff's original Complaint shall be deemed as Defendant's Answer to
2 Plaintiff's First Amended Complaint.

3
4 4. This agreement shall remain in effect only if the settlement
5 becomes final, which means that neither party has voided the settlement, the
6 settlement is approved by judgment of the Court, and the judgment becomes final,
7 in that all dates for appeal have passed and no successful appeal challenging the
8 judgment has occurred. If, for some reason, the settlement does not become final,
9 then this agreement and this amendment to the complaint shall be deemed null and
10 void, the operative complaint in this action shall be the original complaint filed on
11 June 24, 2008, and Defendants shall not be deemed to have waived any defenses
12 pertaining to the additional sub-classes, including (but not limited to) defenses
13 pertaining to the limitations period.

14
15 5. Defendants additionally agree to toll (and/or refrain from using
16 as a defense), as of the date of the filing of this stipulation, all statutes of limitations
17 applicable to all claims or rights or remedies of the Non-City Driver Classes which
18 are either released in the settlement agreement or at issue in the First Amended
19 Complaint. This tolling shall exist as of the date of the filing of this stipulation and
20 whether the settlement becomes final or not.

21
22 IT IS SO STIPULATED.

23
24 DATED: February 20, 2009 LAW OFFICES OF PETER M. HART
25 PETER M. HART

26 By: _____/s/_____
PETER M. HART

27 Attorneys for Plaintiffs
28 JAIME CASTRO AND REYES ALVAREZ

1 DATED: February 20, 2009 DIVERSITY LAW GROUP
2 LARRY W. LEE

3 By: _____/s/_____
4 LARRY W. LEE

5 DATED: February 20, 2009 Attorneys for Plaintiffs
6 JAIME CASTRO AND REYES ALVAREZ
LAW OFFICES OF KENNETH H. YOON
KENNETH H. YOON

7 By: _____/s/_____
8 KENNETH H. YOON

9 Attorneys for Plaintiffs
10 DATED: February 20, 2009 JAIME CASTRO AND REYES ALVAREZ
LAW OFFICE OF ERIC S. HONIG
ERIC S. HONIG

11 By: _____/s/_____
12 ERIC S. HONIG

13 Attorneys for Plaintiffs
14 DATED: February 20, 2009 JAIME CASTRO AND REYES ALVAREZ
PAUL, HASTINGS, JANOFSKY & WALKER
15 LLP
JENNIFER S. BALDOCCHI
16 ELIZABETH A. FALCONE
JENNIFER A. AWREY

17 By: _____/s/_____
18 JENNIFER S. BALDOCCHI

19 Attorneys for Defendants
UNITED PARCEL SERVICE, INC., UPS
20 GROUND FREIGHT, INC., and
OVERNITE CORPORATION
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “A”

PETER M. HART, Esq. (State Bar No. 198691)

LAW OFFICES OF PETER M. HART

13952 Bora Bora Way, F-320

Marina Del Rey, CA 90292

Telephone: (310) 478-5789

Facsimile: (509) 561-6441

LARRY W. LEE (State Bar No. 228175)

DANIEL H. CHANG (State Bar No. 183803)

CRAIG S. HUBBLE (State Bar No. 200789)

DIVERSITY LAW GROUP, A Professional Corporation

444 S. Flower Street

Citigroup Center · Suite 1370

Los Angeles, California 90071

(213) 488-6555

(213) 488-6554 facsimile

KENNETH H. YOON (State Bar No. 198443)

LAW OFFICES OF KENNETH H. YOON

One Wilshire Blvd., Suite 2200

Los Angeles, CA 90017

(213) 612-0988

(213) 947-1211 facsimile

Attorneys for Plaintiffs Jaime Castro and Reyes Alvarez

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

JAIME CASTRO and REYES ALVAREZ as
individuals and on behalf of all others similarly
situated,

Plaintiffs

vs.

UPS GROUND FREIGHT, INC., a
corporation; UNITED PARCEL SERVICE,
INC., a corporation; OVERNITE CORP., a
corporation; and DOES 1 through 20,
inclusive,

Defendants.

Case No.: CV08-4898 ODW (CWx)

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF
FOR:**

(1) VIOLATION OF LABOR CODE

§§201-204;

(2) VIOLATION OF LABOR CODE

§227.3;

(3) VIOLATION OF LABOR CODE

§226;

(4) UNFAIR BUSINESS PRACTICES

**(Violation of California Business &
Professions Code §17200 *et seq.*).**

DEMAND FOR JURY TRIAL

1 Plaintiffs Jaime Castro and Reyes Alvarez (hereinafter referred to as "Plaintiffs"), hereby
 2 submit their Class Action Complaint against Defendants UPS GROUND FREIGHT, INC.,
 3 UNITED PARCEL SERVICE, INC., OVERNITE CORP., and Does 1-20 (hereinafter
 4 collectively referred to as "DEFENDANTS") on behalf of themselves and the classes of all
 5 others similarly situated current and former employees of DEFENDANTS for regular time
 6 wages owed, vacation wages, waiting time penalties, and penalties or damages for failure to
 7 furnish and/or keep accurate records, and for interest, costs, and attorneys' fees as follows:

8 **INTRODUCTION**

9 **1.** This class action is within the Court's jurisdiction under California Labor Code §§
 10 201-204, 226, 227.3 and California Business and Professions Code § 17200, *et seq.*, (Unfair
 11 Practices Act).

12 **2.** This complaint challenges systemic illegal employment practices resulting in
 13 violations of the California Labor Code and Business and Professions Code against employees of
 14 DEFENDANTS.

15 **3.** Plaintiffs are informed and believe and based thereon allege DEFENDANTS, jointly
 16 and severally have acted intentionally and with deliberate indifference and conscious disregard to
 17 the rights of all employees in receiving all regular time wages, vacation wages, waiting time
 18 penalties, and in connection with DEFENDANTS' failure to furnish and/or keep accurate payroll
 19 records of Plaintiffs and Class Members.

20 **4.** Plaintiffs are informed and believe and based thereon allege DEFENDANTS have
 21 engaged in, among other things a system of willful violations of the California Labor Code,
 22 Business and Professions Code and applicable IWC wage orders by creating and maintaining
 23 policies, practices and customs that knowingly deny employees the above stated rights and
 24 benefits.
 25

26 **5.** The policies, practices and customs of defendants described above and below have
 27 resulted in unjust enrichment of DEFENDANTS and an unfair business advantage over
 28 businesses that routinely adhere to the strictures of the California Labor Code, Business and

1 Professions Code.

2 **JURISDICTION AND VENUE**

3 6. The Court has jurisdiction over the violations of the California Labor Code §§ 201-
4 204, 226, 227.3, and California Business and Professions Code § 17200, *et seq.* (Unfair Practices
5 Act), pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332.

6 7. Venue is proper because the DEFENDANTS do business in Los Angeles County and
7 the acts alleged herein took place in Los Angeles County.

8 **PARTIES**

9 8. Plaintiff JIMMY CASTRO was employed by DEFENDANTS from on or about 2001
10 to on or about September 2007 and has resided within the jurisdiction of this Court at all relevant
11 times. Plaintiff CASTRO was a non-exempt hourly employee of DEFENDANTS who engaged
12 in delivery work wholly inside of California state lines. Plaintiff CASTRO and other “less than
13 truck load” (“LTL”) drivers similarly employed as him by DEFENDANTS did not cross state
14 lines and delivered products entirely within California’s boundaries.

15 9. Plaintiff REYES ALVAREZ was employed by DEFENDANTS from on or about
16 April 2003 to on or about September 2007 and has resided within the jurisdiction of this Court at
17 all relevant times. Plaintiff ALVAREZ was a non-exempt hourly employee of DEFENDANTS
18 who engaged in delivery work wholly inside of California state lines. Plaintiff ALVAREZ and
19 other “LTL” drivers similarly employed as him by DEFENDANTS did not cross state lines and
20 delivered products entirely within California’s boundaries.

21 10. Plaintiffs were and are the victim of the policies, practices and customs of
22 DEFENDANTS complained of in this action in ways that have deprived him of the rights
23 guaranteed to him by California Labor Code §§ 201-204, 226, 227.3 and California Business and
24 Professions Code §17200, *et seq.*, (Unfair Practices Act). Plaintiffs were and are the victims of
25 a policy(ies), practice(s) and/or custom(s), that automatically and improperly cut regular time
26 wages of Plaintiffs and the class members and failed to pay all regular time wages to Plaintiffs
27 and the class members, which policy(ies), practice(s) and/or custom(s) further served to deny
28

1 Plaintiffs all regular time wages and vacation wages on termination and failed to provide
2 accurate paycheck paystubs, all in violation of California Labor Code §§ 201-204, 226, 227.3
3 and California Business and Professions Code §17200, *et seq.*, (Unfair Practices Act).

4 **11.** Plaintiffs are informed and believe and based thereon allege Defendants were and
5 are corporations doing business in the State of California selling delivery services to the public.

6 **12.** Plaintiffs are informed and believe and thereon allege that at all times herein
7 mentioned DEFENDANTS and DOES 1 through 20, are and were corporations, business
8 entities, individuals, and partnerships, licensed to do business and actually doing business in the
9 State of California.

10 **13.** As such, and based upon all the facts and circumstances incident to
11 DEFENDANTS' business in California, DEFENDANTS are subject to California Labor Code
12 §§ 201-204, 226, 227.3, and California Business and Professions Code § 17200, *et seq.*, (Unfair
13 Practices Act).

14 **14.** Plaintiffs do not know the true names or capacities, whether individual, partner or
15 corporate, of the DEFENDANTS sued herein as DOES 1 through 20, inclusive, and for that
16 reason, said DEFENDANTS are sued under such fictitious names, and Plaintiffs pray for leave to
17 amend this complaint when the true names and capacities are known. Plaintiffs are informed and
18 believe and thereon allege that each of said fictitious DEFENDANTS was responsible in some
19 way for the matters alleged herein and proximately caused Plaintiff and members of the general
20 public and classes to be subject to the illegal employment practices, wrongs and injuries
21 complained of herein.

22 **15.** At all times herein mentioned, each of said DEFENDANTS participated in the
23 doing of the acts hereinafter alleged to have been done by the named DEFENDANTS; and
24 furthermore, the DEFENDANTS, and each of them, were the agents, servants and employees of
25 each of the other DEFENDANTS, as well as the agents of all DEFENDANTS, and at all times
26 herein mentioned, were acting within the course and scope of said agency and employment.

27 **16.** Plaintiffs are informed and believe and based thereon allege that at all times
28

1 material hereto, each of the DEFENDANTS named herein was the agent, employee, alter ego
 2 and/or joint venturer of, or working in concert with each of the other co-DEFENDANTS and was
 3 acting within the course and scope of such agency, employment, joint venture, or concerted
 4 activity. To the extent said acts, conduct, and omissions were perpetrated by certain
 5 DEFENDANTS, each of the remaining DEFENDANTS confirmed and ratified said acts,
 6 conduct, and omissions of the acting DEFENDANTS.

7 **17.** At all times herein mentioned, DEFENDANTS, and each of them, were members
 8 of, and engaged in, a joint venture, partnership and common enterprise, and acting within the
 9 course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

10 **18.** At all times herein mentioned, the acts and omissions of various DEFENDANTS,
 11 and each of them, concurred and contributed to the various acts and omissions of each and all of
 12 the other DEFENDANTS in proximately causing the injuries and damages as herein alleged. At
 13 all times herein mentioned, DEFENDANTS, and each of them, ratified each and every act or
 14 omission complained of herein. At all times herein mentioned, the DEFENDANTS, and each of
 15 them, aided and abetted the acts and omissions of each and all of the other DEFENDANTS in
 16 proximately causing the damages as herein alleged.

17 **CLASS ACTION ALLEGATIONS**

18 **19. Definition:** The named individual Plaintiffs bring this action on behalf of
 19 themselves and the classes pursuant to Rule 23 of the Federal Rules of Civil Procedure. The
 20 Classes consist of the following:
 21

- 22 a. All past and present non-union, non-linehaul, Less-Than-Truckload City
 23 Drivers employed by Defendants at any time from June 24, 2004, through the
 24 date of class closure as determined by the Court, in California, specifically
 25 excluding any employees whose claims were released as part of the settlement
 26 of the lawsuit entitled *Javier Munoz, et al. v. UPS Ground Freight, Inc.* (N.D.
 27 Cal. Case No. C07-00970 MJJ) (the "City Driver Auto-Deduction Class");
 28 and

- 1 b. All past and present non-union, non-linehaul, Less-Than-Truckload City
 2 Drivers employed by Defendants at any time from June 24, 2004, through the
 3 date of class closure as determined by the Court, in California, whose
 4 employment with Defendants ended prior to the date of preliminary court
 5 approval of the Settlement, specifically excluding any employees whose
 6 claims were released as part of the settlement of the lawsuit entitled *Javier*
 7 *Munoz, et al. v. UPS Ground Freight, Inc.* (N.D. Cal. Case No. C07-00970
 8 MJJ) (the “City Driver Terminated Employee Class”); and
 9 c. All past and present non-union, non-exempt (hourly) employees of
 10 Defendants who were employed at any time from June 24, 2004, through the
 11 date of class closure as determined by the Court, in California, specifically
 12 excluding any employees whose claims were released as part of the settlement
 13 of the lawsuit entitled *Javier Munoz, et al. v. UPS Ground Freight, Inc.* (N.D.
 14 Cal. Case No. C07-00970 MJJ) and specifically excluding any City Driver
 15 Class Members (the “Non-City Driver Auto-Deduction Class”); and
 16 d. All past and present non-union, non-exempt (hourly) employees of
 17 Defendants, who were employed at any time from June 24, 2004, through the
 18 date of class closure as determined by the Court, in California, whose
 19 employment with Defendants ended prior to the date of preliminary court
 20 approval of the Settlement, specifically excluding any employees whose
 21 claims were released as part of the settlement of the lawsuit entitled *Javier*
 22 *Munoz, et al. v. UPS Ground Freight, Inc.* (N.D. Cal. Case No. C07-00970
 23 MJJ) and specifically excluding any City Driver Class Members (the “Non-
 24 City Driver Terminated Employees Class”).
 25

26 **20. Numerosity:** The members of the classes are so numerous that joinder of all
 27 members would be impractical, if not impossible. Plaintiffs allege that there are more than 200
 28 current and former Class Members. The identity of the members of the classes are readily

ascertainable by review of DEFENDANTS' records, including payroll records. Plaintiffs are informed and believe and based thereon allege that DEFENDANTS (a) failed to pay all regular time wages and vacation wages earned by Plaintiffs and the class members, (b) failed to furnish and/or keep accurate payroll records in violation of Labor Code § 226 of Plaintiffs and the Class Members, and (c) engaged in Unfair Business Practices, all in violation of IWC Wage Order No 4-2001.

21. Adequacy of Representation: The named Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the classes defined above. Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the classes and individual Plaintiffs. Plaintiffs' attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California courts.

22. DEFENDANTS uniformly administered a corporate policy, practice of (a) failing to pay to Plaintiffs all regular time wages and vacation wages earned by Plaintiffs and the class members, (b) failing to furnish and/or keep accurate payroll records of Plaintiffs and the class members in violation of Labor Code § 226, and (c) engaging in Unfair Business Practices, all in violation of IWC Wage Order No 4-2001.

23. Plaintiffs are informed and believe and based thereon allege that DEFENDANTS, in violation of California Labor Code §§ 201 to 204, and 227.3, respectfully, had a consistent and uniform policy, practice of willfully failing to comply with Labor Code § 203. Plaintiffs and other members of the classes did not secret or absent themselves from DEFENDANTS, nor refuse to accept the earned and unpaid wages from DEFENDANTS. Accordingly, DEFENDANTS are liable for waiting time compensation for the unpaid wages to separated employees pursuant to California Labor Code § 203.

24. Common Question of Law and Fact: There are predominant common questions of law and fact and a community of interest amongst Plaintiffs and the claims of the classes concerning DEFENDANTS' (a) failure to pay to Plaintiffs and the class members all regular

1 time wages and vacation wages earned, (b) failure to furnish and/or keep accurate payroll records
2 of Plaintiff and the class members in violation of Labor Code § 226 by failing to state the
3 accurate gross wages earned, total hours worked by the employee, net wages earned, and (c)
4 engagement in Unfair Business Practices, all in violation of IWC Wage Order No 4-2001.

5 **25. Typicality:** The claims of Plaintiffs are typical of the claims of all members of
6 the classes. Plaintiffs are members of the Classes and are owed wages and have suffered the
7 alleged violations of California Labor Code §§ 201-204, 226, 227.3, and IWC Wage Order No.
8 4-2001, by DEFENDANTS' (a) failure to pay to Plaintiffs and the class members all regular time
9 wages and vacation wages earned, (b) failure to furnish and/or keep accurate payroll records of
10 Plaintiffs and the class members in violation of Labor Code § 226 by failing to state the accurate
11 gross wages earned, total hours worked by the employee, net wages earned, and (c) engagement
12 in Unfair Business Practices, all in violation of IWC Wage Order No 4-2001.

13 **26.** The California Labor Code and upon which Plaintiffs base their claims are
14 broadly remedial in nature. These laws and labor standards serve an important public interest in
15 establishing minimum working conditions and standards in California. These laws and labor
16 standards protect the average working employee from exploitation by employers who may seek
17 to take advantage of superior economic and bargaining power in setting onerous terms and
18 conditions of employment.

19 **27.** The nature of this action and the format of laws available to Plaintiffs and
20 members of the classes identified herein make the class action format a particularly efficient and
21 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
22 file an individual lawsuit, the corporate DEFENDANTS would necessarily gain an
23 unconscionable advantage since it would be able to exploit and overwhelm the limited resources
24 of each individual plaintiff with their vastly superior financial and legal resources. Requiring
25 each class member to pursue an individual remedy would also discourage the assertion of
26 lawful claims by employees who would be disinclined to file an action against their former
27 and/or current employer for real and justifiable fear of retaliation and permanent damage to their
28

1 careers at subsequent employment.

2 **28.** The prosecution of separate actions by the individual class members, even if
3 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
4 to individual class members against the DEFENDANTS and which would establish potentially
5 incompatible standards of conduct for the DEFENDANTS, and/or (b) adjudications with respect
6 to individual class members which would, as a practical matter, be dispositive of the interest of
7 the other class members not parties to the adjudications or which would substantially impair or
8 impede the ability of the class members to protect their interests. Further, the claims of the
9 individual members of the classes are not sufficiently large to warrant vigorous individual
10 prosecution considering all of the concomitant costs and expenses.

11 **29.** Such a pattern, practice and uniform administration of corporate policy regarding
12 illegal employee compensation described herein is unlawful and creates an entitlement to
13 recovery by the Plaintiffs and the classes identified herein, in a civil action, for the unpaid
14 balance of the full amount of unpaid wages including interest thereon, applicable penalties,
15 reasonable attorney's fees, and costs of suit according to the mandate of California Labor Code
16 §§ 226 and Code of Civil Procedure § 1021.5.

17 **30.** Proof of common business practices or factual patterns, which the named
18 Plaintiffs experienced and are representative of, will establish the right of each of the members of
19 the Plaintiff classes to recovery on the causes of action alleged herein.

20 **31.** The Plaintiff classes are commonly entitled to a specific fund with respect to the
21 compensation illegally and unfairly retained by DEFENDANTS. The Plaintiff classes are
22 commonly entitled to restitution of those funds being improperly withheld by DEFENDANTS.
23 This action is brought for the benefit of the entire classes and will result in the creation of a
24 common fund.
25
26
27
28

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201 - 204

(AGAINST ALL DEFENDANTS BY PLAINTIFFS)

32. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 31 as though fully set for herein.

33. At all times relevant herein, DEFENDANTS were required to pay their non-exempt hourly employees all regular time wages for all hours worked and also failed to pay final regular time wages owed in a timely fashion at the end of employment pursuant to California Labor Code § 201-204.

34. As a pattern and practice, DEFENDANTS regularly failed to pay Plaintiffs and class members their regular time wages pursuant to Labor Code §§ 201 to 204 by automatically and uniformly as a matter of corporate policy deducting ½ hours of time for each workday and accordingly owe wages for such improper deductions and also owe waiting time penalties pursuant to Labor Code § 203.

35. The conduct of DEFENDANTS and their agents and employees as described herein was willfully done in violation of Plaintiffs' and class members' rights, and done by managerial employees of DEFENDANTS.

36. Plaintiffs are informed and believe and based thereon allege DEFENDANTS' willful failure to pay all regular time wages due and owing them and failure to pay all regular time wages owed upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiffs and other members of the classes who have separated from employment are entitled to all the regular time wages that they are owed and to compensation pursuant to Labor Code § 203.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE § 227.3

(AGAINST ALL DEFENDANTS BY PLAINTIFFS)

37. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 36 as

1 though fully set for herein.

2 **38.** This cause of action is brought pursuant to Labor Code § 227.3 which prohibits
3 employers from forfeiting the vested vacation wages of their employees.

4 **39.** Plaintiffs had unused vested vacation wages, including vested personal vacation
5 days, that were not paid out to them in a timely fashion at the end of their employment in
6 violation of Labor Code § 227.3.

7 **40.** As a matter of uniform corporate policy and procedure and practices
8 DEFENDANTS violated Labor Code § 227.3 by failing to pay Plaintiffs and members of the
9 classes all vested vacation wages, including all vested personal vacation days, at the end of their
10 employment. The uniform policy of not paying Plaintiff and members of the classes all vested
11 vacation wages, including all vested personal days, at the end of their employment caused a
12 forfeiture of vested vacation wages in violation of Labor Code § 227.3.

13 **41.** The conduct of DEFENDANTS and their agents and employees as described
14 herein was willful and was done in conscious disregard of Plaintiffs' and class members' rights,
15 and done by managerial employees of DEFENDANTS and supports an award of up to 30 days of
16 pay, under Labor Code § 203, as penalties for Plaintiffs and each former employee of
17 DEFENDANTS who were not paid out all vested vacation wages.

18 **42.** Such a pattern, practice and uniform administration of corporate policy regarding
19 illegal employee compensation as described herein is unlawful and creates an entitlement to
20 recovery by Plaintiff in a civil action for damages and wages owed and for costs and attorney's
21 fees.
22

23 **THIRD CAUSE OF ACTION**

24 **FOR VIOLATION OF LABOR CODE § 226 REGARDING RECORD KEEPING** 25 **(AGAINST ALL DEFENDANTS BY PLAINTIFFS)**

26 **43.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 42 as
27 though fully set for herein.

28 **44.** DEFENDANTS failed in their affirmative obligation to furnish and keep accurate

1 records regarding the wages earned, net wages earned, and total amount of compensation of their
 2 California employees in pay periods. DEFENDANTS, as a matter of policy and practice, did not
 3 maintain accurate records all in violation of Labor Code § 226.

4 **45.** As a matter of policy and practice, and in knowing and willful and intentional
 5 violation of Labor Code § 226, DEFENDANTS automatically deducted ½ hour of wages for
 6 each workday.

7 **46.** Such a pattern, practice and uniform administration of corporate policy as
 8 described herein is unlawful and creates an entitlement to recovery by the Plaintiffs and the
 9 classes identified herein, in a civil action, for all damages, including regular time wages owed, or
 10 penalties pursuant to Labor Code § 226, including interest thereon, attorney's fees, and costs of
 11 suit according to the mandate of California Labor Code § 226.

12 **47.** DEFENDANTS' wrongful and illegal conduct in failing to accurately record the
 13 hours worked in accordance with Labor Code § 226 despite the clear legal obligation to do so,
 14 unless and until enjoined and restrained by order of this court, will cause great and irreparable
 15 injury to Plaintiffs and all members of the classes in that the DEFENDANTS will continue to
 16 violate these California laws, represented by labor statutes, unless specifically ordered to comply
 17 with same. This expectation of future violations will require current and future employees to
 18 repeatedly and continuously seek legal redress in order to gain compensation to which they are
 19 entitled under California law. Plaintiffs have no other adequate remedy at law to insure future
 20 compliance with the California labor laws and wage orders alleged to have been violated herein.
 21

22 **FOURTH CAUSE OF ACTION**

23 **FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200 *ET SEQ.***

24 **(AGAINST ALL DEFENDANTS BY PLAINTIFFS)**

25 **48.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 47 as
 26 though fully set for herein.

27 **49.** DEFENDANTS, and each of them, have engaged and continue to engage in unfair
 28 and unlawful business practices in California by practicing, employing and utilizing the

1 employment practices outlined above, include, to wit, by failing to (a) pay Plaintiff and the
 2 classes all regular time wages owed and (b) pay all vacation wages owed.

3 **50.** DEFENDANTS' utilization of such unfair and unlawful business practices
 4 constitutes unfair, unlawful competition and provides an unfair advantage over DEFENDANTS'
 5 competitors.

6 **51.** Plaintiffs seek, on their own behalf and on behalf of other members of the classes
 7 similarly situated full restitution of regular time wages owed, as necessary and according to
 8 proof, to restore any and all regular time wages withheld, acquired and/or converted by the
 9 DEFENDANTS by means of the unfair practices complained of herein.

10 **52.** Plaintiffs seek, on their own behalf and on behalf of other members of the classes
 11 similarly situated, an injunction to prohibit DEFENDANTS from continuing to engage in the
 12 unfair business practices complained of herein.

13 **53.** The acts complained of herein for Plaintiffs and the class members occurred
 14 within the last four years preceding the filing of the complaint in this action.

15 **54.** Plaintiffs are informed and believe and on that basis allege that at all times herein
 16 mentioned DEFENDANTS have engaged in unlawful, deceptive and unfair business practices,
 17 as proscribed by California Business and Professions Code § 17200 *et seq.*, including those set
 18 forth herein above thereby depriving Plaintiffs and other members of the classes the minimum
 19 working condition standards and conditions due to them under the California laws and Industrial
 20 Welfare Commission wage orders as specifically described therein.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray for judgment for themselves and all others on whose
 23 behalf this suit is brought against DEFENDANTS, jointly and severally, as follows:
 24

- 25 1. For an order certifying the proposed classes;
- 26 2. For an order appointing Plaintiffs as the representatives of the classes;
- 27 3. For an order appointing Counsel for Plaintiffs as class counsel;
- 28 4. Upon the First Cause of Action, for consequential damages according to proof and for

1 waiting time penalties according to proof pursuant to California Labor Code § 203 and
2 for costs, interest, and attorneys' fees;

3 5. Upon the Second Cause of Action, for all wages, damages, and/or penalties according to
4 proof pursuant to California Labor Code § 227.3;

5 6. Upon the Third Cause of Action, for all wages, damages, and/or penalties according to
6 proof pursuant to California Labor Code § 226;

7 7. Upon the Fourth Cause of Action, for restitution to Plaintiffs and the class members all
8 funds unlawfully acquired by DEFENDANTS by means of any acts or practices declared
9 by this Court to be in violation of Business and Professions Code § 17200 *et seq.*, for an
10 injunction to prohibit DEFENDANTS to engage in the unfair business practices
11 complained of herein, for an injunction requiring DEFENDANTS to give notice to
12 persons to whom restitution is owing of the means by which to file for restitution;

13 8. On all causes of action for attorneys fees and costs and interest as provided by California
14 Labor Code §§ 201-204, 218.5, 218.6, 226, 227.3, and Code of Civil Procedure § 1021.5
15 and for such other and further relief the Court may deem just and proper.
16

17 **DATED: February 20, 2009**

LAW OFFICES OF PETER M. HART

18
19 By: /s/
20 **Peter M. Hart, Esq.**
21 **Attorney for Plaintiffs and the classes**

22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs, for themselves and the class members, hereby demand a jury trial.

24 **DATED: February 20, 2009**

LAW OFFICES OF PETER M. HART

25
26 By: /s/
27 **Peter M. Hart, Esq.**
28 **Attorney for Plaintiffs and the classes**